

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

GERALD DEXTER JONES,

Plaintiff

VS.

IRA EDWARDS, *et al.*

Defendants

NO. 3:06-CV-34 (CDL)

**PROCEEDINGS UNDER 42 U.S.C. §1983
BEFORE THE U. S. MAGISTRATE JUDGE**

RECOMMENDATION

Defendants IRA EDWARDS and CAPTAIN BURKE have filed a motion seeking summary judgment against the plaintiff GERALD DEXTER JONES in the above-styled case which includes an argument that this proceeding ought to be dismissed because the plaintiff failed to exhaust his administrative remedies prior to filing the above-captioned lawsuit in this court. Tab #20. Although plaintiff was advised of his right and duty to respond to the defendant's motion, he has failed to do so. Tab #22.

The defendants have asserted that the plaintiff has failed to exhaust the administrative remedies available to him as required by the Prison Litigation Reform Act of 1995, 42 U.S.C. §1997e, *et seq.* The defendants' motion is supported by the affidavit of Alexander J. Burke, attached to which is the Standard Operating Procedure regarding the inmate grievance procedures that were in force when the plaintiff's allegations came about. Tab #20-4. Based on the evidence provided by defendant Edwards, which is uncontroverted by the plaintiff, it is clear that the plaintiff did not exhaust the administrative remedies available to him with respect to the allegations involved in his complaint.

Accordingly, IT IS RECOMMENDED that the defendants' Motion for Summary Judgment (Tab #44) be treated as a **MOTION TO DISMISS** and be **GRANTED**, thereby **DISMISSING** all claims *without prejudice*.¹

¹Dismissals for failure to exhaust administrative remedies must be without prejudice. Thus, it would be inappropriate to enter summary judgment herein against the plaintiff.

Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to this RECOMMENDATION with the district judge to whom this case is assigned **WITHIN TEN (10) DAYS** after being served with a copy thereof.

SO RECOMMENDED this 18th day of JULY, 2006.



A handwritten signature in blue ink, reading "Claude W. Hicks, Jr." The signature is written in a cursive, flowing style.

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE